

DEPARTMENT OF HUMAN SERVICES

Repeal of Chapter 15-191 and
Adoption of Chapter 17-2029
Hawaii Administrative Rules

October 21, 2004

1. Chapter 191 of Title 15, Hawaii
Administrative Rules, is repealed.

2. Chapter 2029 of Title 17, Hawaii
Administrative Rules, entitled "Appeals Procedure for
Homeless Programs" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF
HAWAII

CHAPTER 191

APPEALS PROCEDURES FOR HOMELESS PROGRAMS

Repealed

§§15-191-1 to 15-191-51 Repealed. [R **NOV 15 2004**]

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF
HAWAII

CHAPTER 2029

APPEALS PROCEDURE FOR HOMELESS PROGRAMS

Subchapter 1 General Provisions

§17-2029-1	Purpose
§17-2029-2	Definitions
§17-2029-3	Submittal and filing of documents
§17-2029-4	Authentication of documents
§17-2029-5	Disqualification of member of corporation, executive director, or hearings officer
§17-2029-6	Access to corporation records
§17-2029-7	Limitation on access to corporation records

Subchapter 2 Informal Hearing

§17-2029-20	General rule
§17-2029-21	Proceedings before the corporation
§17-2029-22	Request for informal hearing
§17-2029-23	Scheduling of hearing
§17-2029-24	Procedures governing the informal hearing
§17-2029-25	Decision of the executive director
§17-2029-26	Request for reconsideration of corporation's decision
§17-2029-27	Appeal to circuit court

§17-2029-1

§17-2029-28 Failure to appear
§§17-2029-29 to 17-2029-50 (Reserved)

Subchapter 3 Miscellaneous Provisions

§17-2029-51 Severability

Historical note: Chapter 2029 of Title 17, Hawaii Administrative Rules, is based substantially upon chapter 191 of Title 15, Hawaii Administrative Rules. [Eff 10/25/99; R

NOV 15 2004

SUBCHAPTER 1

GENERAL PROVISIONS

§17-2029-1 Purpose. These rules are adopted pursuant to chapters 91 and 92, HRS, and implement section 201G-452, HRS, and the following objectives:

- (1) To govern the appeals procedure before the housing and community development corporation of Hawaii; and
- (2) To secure the just and efficient determination of proceedings before the housing and community development corporation of Hawaii. [Eff **NOV 15 2004**,
(Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapters 91, 92)

§17-2029-2 Definitions. Whenever used in this chapter, unless otherwise specifically defined:

"Chairperson" means the duly elected chair of the corporation or the chairperson's designated representative.

"Corporation" means the housing and community development corporation of Hawaii.

"Dependent" means a member of a household, other than the head or spouse, who is related by blood or

adoption and including foster children and hanai children, who is under nineteen years of age, disabled, or physically challenged.

"Executive director" means the executive director of the corporation or the executive director's designated representative.

"Government record" means information maintained by an agency in written, auditory, visual, electronic, or other physical form as defined in section 92F-3, HRS.

"Hanai child" means a person, under nineteen years of age, for whom an applicant provides food, nourishment, and support and who is known among friends, relatives, and the community as the applicant's child.

"Hearings officer" means any person, duly appointed and authorized by the corporation to hold a hearing for the purpose of taking evidence or oral argument and making a recommended decision in any matter before the corporation.

"HRS" means the Hawaii Revised Statutes.

"Party" means the corporation, if named, permitted, or entitled as of right to participate in a proceeding; each person named in a proceeding; or any person permitted or entitled as of right to participate in a proceeding before the corporation in the capacity of a petitioner, claimant, respondent, intervenor, or in a capacity other than that of a witness.

"Person" means an individual, partnership, corporation, association through a representative, or public or private organization of any character.

"Petition" means a written request to the corporation by a party which seeks relief under these rules.

"Petitioner" means a party who initiates a proceeding.

"Proceeding" refers to any matter brought before the corporation for action following due consideration of the objectives, goals, policies, and all related matters of the corporation.

"Respondent" means the party against whom a petition is filed, the party against whom relief is sought, or any party who contests or controverts a proceeding.

"Rules" refers to adopted rules of each homeless program pursuant to section 201G-452, HRS, administered by the corporation. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §§201G-452, 92F-3)

§17-2029-3 Submittal and filing of documents. All documents and requests to the corporation of every nature shall be in writing and addressed to the executive director, or the chairperson, pursuant to section 17-2029-4. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 92)

§17-2029-4 Authentication of documents. The executive director is authorized to certify as to the authenticity of documents filed with the offices of the corporation. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §§201G-452, chapter 92)

§17-2029-5 Disqualification of member of corporation, executive director, or hearings officer. No matter shall be heard by a member of the corporation, by the executive director, or by a hearings officer who:

- (1) Has any pecuniary interest in the matter being heard; or
 - (2) Is related within the third degree by blood or marriage to any party to the proceeding.
- [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)

§17-2029-6 Access to corporation records.
(a) All government records of the corporation must be open for inspection in the principal office of the

corporation during established business hours, unless access to the records is restricted or closed by law.

(b) A request for access to or copies of government records shall be made in writing to the executive director and shall include a clear and concise description of the records sought. All such requests must be signed by the requesting party or the party's authorized representative.

(c) The corporation shall not be required to prepare a compilation or summary of its records in response to a request for records.

(d) Copies of the government records shall be available in accordance with subsection (b), and payment of the reasonable costs of reproduction set forth in section 92-21, HRS, and the fee for searching, reviewing, or segregating the records set forth in chapter 92F-42(13). Reasonable costs of reproduction shall include, but are not limited to, actual time for reproduction; material costs, including electricity cost, equipment, and equipment rental costs; costs for certification; and labor costs for monitoring the public inspection of the records to prevent theft, loss, defacement, or alteration of the records. [Eff **NOV 15 2004**] (Auth: HRS §201G - 452(b)) (Imp: HRS §201G-452, chapter 91)

§17-2029-7 Limitation on access to corporation records. Access to corporation records is subject to the limitations set forth in section 92F-12, HRS. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §§201G-452, 92F-12)

SUBCHAPTER 2

INFORMAL HEARINGS

§17-2029-20 General rule. (a) All persons and parties shall comply with these rules of appeals procedure when appearing before the corporation. The

corporation may waive, modify, or suspend any of the provisions of this chapter to the extent permitted by law. All persons and parties shall have a reasonable opportunity to present evidence and argument on all the issues involved.

(b) The corporation may request that the parties sign a waiver of confidentiality which would release the corporation from information made public through the hearing process. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)

§17-2029-21 Proceedings before the corporation.

(a) A party to a proceeding before the corporation shall follow the rules pursuant to the corporation's rules of practice and procedure.

(b) An appearance before the corporation may be made by speaker telephone, video teleconferencing, or other electronic means, with the approval of the executive director or chairperson.

[Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452)

§17-2029-22 Request for informal hearing.

(a) Any party that has been aggrieved by a decision rendered pursuant to a hearing at the provider agency level may request an informal hearing before the executive director to reconsider the action.

(b) Any request for informal hearing by a party shall be in writing and shall be filed with ~~the~~ executive director within ten calendar days of the action from which relief is sought. The written request shall specify:

(1) The grounds for the request for informal hearing; and

(2) The action or relief sought.

[Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)

S17-2029-23 Scheduling of hearing. Upon receipt of a request for an informal hearing, the executive director shall schedule a hearing within thirty business days at a time and place reasonably convenient to the petitioner and the respondent. A written notification specifying the time, place, and procedures governing the informal hearing shall be served at least five calendar days in advance of hearing date, unless waived by each party, and in the following manner:

(1) By personal service by a person authorized by the facility operator:

(A) Upon a person other than a dependent or an incompetent person in the following manner:

(i) By delivering the notice personally or, in the case the party cannot be found, by leaving copies at the party's dwelling unit or usual place of abode with some person of suitable age and discretion then residing therein; or

(ii) By delivering the notice to an agent authorized by appointment or by law to receive service;

(B) Upon a dependent, by delivering the notice personally to the guardian of the dependent's property, or if there is no guardian or if service cannot be made upon the guardian, then as provided by order of the hearings officer; and also to the dependent if the dependent is older than fifteen years of age;

(C) Upon an incompetent person, by delivering the notice personally to the guardian of the person's property or if service cannot be made upon the guardian, then as provided by order of the hearings officer; and also to the

incompetent person, unless the hearings officer otherwise orders;

- (2) By mailing the notice to any party at the party's last known address by certified or registered mail, return receipt requested; or
- (3) If any person cannot be served with process, and the facts shall appear by affidavit or otherwise to the satisfaction of the hearings officer, service as to the person pursuant to order of the hearings officer shall include leaving a copy of the notice affixed in a conspicuous place upon the party's dwelling unit. [Eff **NOV 15 2004**]
(Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)

§17-2029-24 Procedures governing the informal hearing. (a) The hearing shall be conducted informally by the executive director or a hearings officer designated by the executive director. Oral or documentary evidence pertinent to the facts or issues raised by the petitioner in the request for hearing may be received without regard to the admissibility under the rules of evidence applicable to judicial proceedings. The executive director shall require the corporation, the provider agency, the petitioner, counsel, and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the executive director to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denying the relief sought, as appropriate.

(b) The petitioner shall be afforded a fair hearing and provided the basic safeguards of due process which include:

- (1) The opportunity to examine and copy, before the informal hearing and at the petitioner's own expense, documents, records, and rules of the provider agency or the corporation

that will be presented at the informal hearing that are relevant to the hearing. Any document not made available in response to written request by the petitioner may not be relied on by the provider agency or the corporation at the informal hearing;

- (2) The right to be represented by counsel at the petitioner's own expense;
- (3) The right to present evidence and arguments in support of the request for reconsideration, to controvert evidence relied upon by the provider agency or the corporation, and to confront and cross-examine all witnesses on whose testimony or information the provider agency or the corporation relies; and
- (4) A decision based solely and exclusively upon the facts presented at the informal hearing.

(c) The petitioner must first show entitlement to the relief sought, and thereafter, the provider agency shall sustain the burden of justifying the hearing decision against which the petition for hearing is directed.

(d) The petitioner, the provider agency, or the corporation may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of the transcript. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)

\$17-2029-25 Decision of the executive director.

The executive director shall prepare a written decision, together with the reasons therefor, within thirty business days after the hearing. A copy of the decision shall be sent to each party. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)

§17-2029-26 Request for reconsideration of corporation's decision. (a) A request for reconsideration of an order, ruling, decision, or action of the corporation shall be made in writing and filed with the corporation within ten calendar days of the order, ruling, decision, or action. The request shall state the grounds for the request for reconsideration and may be summarily denied if it appears from the request that there is no new, relevant evidence on the matter to present to the corporation.

(b) Upon receipt of the request, the executive director shall:

- (1) Assign the request for reconsideration for further proceedings either before the corporation or before a hearings officer; or
- (2) Deny the request in writing on the grounds that no new relevant evidence exists to support the request for reconsideration.

(c) Notice shall be provided to all parties upon the scheduling of a hearing before the corporation or a hearings officer.

(d) When the hearing is held before a hearings officer, the entire record shall be transmitted to the corporation for action together with the recommended decision, any timely filed exceptions, and any timely filed statement in support of the reconsideration.

[Eff **NOV 15 2004** (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)]

§17-2029-27 Appeal to circuit court. Appeal of the corporation's final order, ruling, decision, or action may be made to the circuit court as provided by law. [Eff **NOV 15 2004** (Auth: HRS §201G-452(b)) (Imp: HRS §§201G-452, 91-14)]

§17-2029-28 Failure to appear. If any party fails to appear at the scheduled proceeding without good cause, the corporation may proceed in the absence of the party and may issue any decision or order it

deems just and equitable under the circumstances, including dismissal of the party's claim for relief and reimbursement of costs, if such has been incurred. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)

§§17-2029-29 to 17-2029-50 (Reserved)

SUBCHAPTER 3

MISCELLANEOUS PROVISIONS

§17-2029-51 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person or transaction or other circumstances is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or the application of this chapter to other persons or transactions or circumstances shall not be affected. [Eff **NOV 15 2004**] (Auth: HRS §201G-452(b)) (Imp: HRS §201G-452, chapter 91)

DEPARTMENT OF HUMAN SERVICES

The repeal of Chapter 15-191, Hawaii Administrative Rules, and the adoption of Chapter 17-2029, Hawaii Administrative Rules, on the Summary Page dated October 21, 2004, was adopted on October 21, 2004, following public hearings held on September 14, 2004 after public notice was given in the Honolulu Star-Bulletin, The Garden Isle, The Maui Times, West Hawaii Today, and the Hawaii Herald-Tribune newspapers on August 12, 2004.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.




CHARLES A. STED, Chairperson
Housing and Community
Development Corporation of
Hawaii



THEODORE E. LIU
Director of Business,
Economic Development and
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APPROVED AS TO FORM:


Deputy Attorney General
LINDA LINGLE
Governor
State of Hawaii
Date: **NOV 3 2004**

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Filed

LIEUTENANT GOVERNOR'S
OFFICE